

Decision 06-03-019 March 15, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**OPINION ADDRESSING PETITIONS TO MODIFY
DECISION (D.) 02-10-062, D.03-06-076, D.03-12-062, AND D.04-01-050**

1. Summary

This decision addresses seven petitions to modify (petitions) filed in this proceeding between December 2003 and May 2004 by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), San Diego Gas & Electric Company (SDG&E), and Sempra Generation (SG), formerly known as Sempra Energy Resources. We find here that two of the petitions were already addressed through applications for rehearing and the other five are either moot or they address policy issues that are better considered in other proceedings. Therefore, we deny or dismiss each petition and grant SG's request to withdraw its petition. This proceeding is closed.

2. Procedural Background

On October 25, 2001, the Commission opened this proceeding to establish the necessary operating procedures and ratemaking mechanisms for California's three largest electric utilities, PG&E, Edison, and SDG&E, to resume full procurement responsibilities by January 1, 2003. As part of the regulatory

framework we established, we adopted short-term, and later long-term, procurement plans for each utility.

The petitions here request modifications to four decisions: D.02-10-062, D.03-06-076, D.03-12-062, and D.04-01-050. The first two decisions involve the 2003 procurement plans and the third and fourth decisions adopt the 2004 procurement plans and a longer term procurement framework.¹

In April 2004, the Commission opened a new procurement rulemaking, R.04-04-003, to address on-going procurement issues and to serve as an “umbrella” proceeding to coordinate and incorporate Commission efforts in separate proceedings on community choice aggregation, demand response, distributed generation, energy efficiency, qualifying facilities, renewable portfolio standards, and transmission assessment and planning. As part of R.04-04-003, the Commission in D.04-12-048 gave the utilities authority to plan for and procure resources for the planning period 2005 through 2014, in concert with policies articulated in the resource adequacy phase of the proceeding.

A third procurement rulemaking, to carry forward from R.04-04-003, is scheduled for the Commission’s consideration in early 2006.

¹ D.02-10-062 adopted the initial regulatory framework under which the utilities would resume full procurement and required the utilities to file updated 2003 procurement plans, which were approved in D.02-12-074. D.03-06-076 modified D.02-10-062 and D.02-12-074 in response to applications for rehearing and denied rehearing. D.03-12-062 addressed the majority of 2004 short-term procurement issues. D.04-01-050 addressed the remainder of 2004 short-term procurement issues and adopted the first long-term procurement framework.

3. Discussion of Petitions

a. Edison's February 19, 2004 Petition to Modify D.03-12-062

Edison's petition seeks modification to its 2004 procurement plan, as follows:

- (1) Establish a specific time for issuing a resolution for approval of the utilities' quarterly compliance filings;
- (2) State specifically that the target guideline for spot market procurement does not apply to procurement of capacity to meet operating reserve requirements;
- (3) Delete language which could be interpreted to allow the California Department of Water Resources (DWR) to perform "after the fact reasonableness reviews";
- (4) Change language which requires the utilities to consult with their procurement review group (PRG) for transactions greater than 90 days;
- (5) Modify language which directs Edison to assume a "pro rata" allocation of DWR costs;
- (6) Allow the utilities to enter into contracts of up to five years in length where delivery begins in 2004 or later and termination occurs prior to 2009;
- (7) Modify language which would require only an "unqualified certification" as a basis for authorizing Edison's proprietary risk model;
- (8) Modify language which restricts bilateral transactions to less than one calendar quarter in length and clarify that the term "less than 90 days forward" refers to the start date of the transaction;
- (9) Eliminate the requirement that Edison demonstrate that identified over-the-counter brokers provide prices equivalent to those of exchanges;
- (10) Clarify how to measure the level of variance which triggers a PRG meeting;

- (11) Delete the sentence which states that a utility should not arbitrage in energy markets; and
- (12) Clarify that Edison's compliance filing is due at the same time as PG&E's and SDG&E's compliance filings.

In comments on the petition, PG&E and SDG&E support Edison's request, with PG&E requesting additional language changes to (6) above. DWR filed a memo opposing requests (1), (2), and (5). The Division of Ratepayer Advocates (DRA) opposes (1) and (7), partially supports (2), (9), and (10), and supports the other requested changes.

We find that Edison's petition is moot because two Commission decisions have already addressed it. In D.04-12-048, the Commission explicitly granted 10 out of the 12 items in the subject petition, as modified by Edison's subsequent testimony in that proceeding.² Then, in D.05-12-022, the Commission reversed itself and decided not to grant modification of two of the previously-approved items.³ Therefore, we dismiss the petition.

**b. Sempra Generation's February 10, 2004
Petition to Modify D.04-01-050**

In its petition, SG requests the Commission modify and/or clarify its affiliate-transaction ban in order for SG's affiliate, SDG&E, to avail itself of SG's generation resources. SG requests the Commission consider one of four alternatives:

- Eliminate the affiliate-transactions ban;
- Modify the affiliate-transactions ban to provide an exemption for affiliate transactions the utilities believe can be justified;

² D.04-12-048, Finding of Fact 75 and Ordering Paragraph 16.

³ Ordering Paragraph 1.

- Modify the ban to extend the exemption to all existing generating plants; and
- At a minimum, clarify that the ban does not extend to gas-related transactions unrelated to electric-generation fuel.

Comments opposing the petition were filed by The Utility Reform Network and Utility Consumers' Action Network.

On February 16, 2006, SG filed a motion to withdraw its petition on the basis that the petition is moot due to Commission actions taken in D.04-12-048 in R.04-04-003. (See discussion in D.04-12-048, *mimeo.* at pp. 128-9, Findings of Fact 83 and 84, Conclusions of Law 28 and 29, and Ordering Paragraph 27.) By electronic ruling on February 24, 2006, the assigned administrative law judge (ALJ) shortened response time to the motion to February 28, 2006.

No party filed a response to SG's motion. For good cause shown, we grant SG's request to withdraw its petition to modify D.04-01-050.

c. SDG&E's February 20, 2004 Petition to Modify D.04-01-050

In its petition, SDG&E seeks modification to the discussion and conclusions regarding its procurement risk committee. On February 25, 2004, SDG&E filed an application for rehearing on D.04-01-050, raising the same issues.

In D.04-07-037, the Commission addressed SDG&E's application for rehearing, stating that "SDG&E has failed to grasp the nature of our concerns about potential conflicts of interest in SDG&E's procurement transactions." The decision corrects one factual error raised by SDG&E, but notes that SDG&E's clarification does not obviate the concerns expressed in D.04-01-050. The discussion concludes that when the audit ordered in D.04-01-050 is completed, it will provide the information necessary to evaluate whether the current structure

and conditions are effective in preventing conflicts of interest and cross-subsidization in SDG&E's procurement. (See D.04-07-037, pp. 11-13.)

The issues raised in SDG&E's petition have already been addressed in D.04-07-037. Therefore, the petition is dismissed.

d. PG&E's February 20, 2004 Petition to Modify D.03-12-062

In its petition, PG&E requests two modifications to D.03-12-062: (1) that the Commission clarifies that for purposes of upfront standards, "short-term" means up to and including three calendar months, or one quarter, not "90 days"; and (2) a finding that competitive solicitations include those conducted by electronic auction. The only party filing comments, DRA, agrees with the short-term definition but opposes PG&E's electronic auction authority proposal because it does not contain sufficient details.

We find that PG&E's requests are moot due to the procedural process set forth in D.04-12-048 for modifications to the 2004 short term plan. (See Finding of Fact 106.) Any requirements that have carried forward to later plans should be modified in the current procurement proceeding or addressed to the Commission in the upcoming new rulemaking. Therefore, we dismiss the petition.

e. Edison's February 23, 2004 Petition to Modify D.03-06-076

Edison seeks to modify the Commission's decision on the applications for rehearing of D.02-10-062 and D.02-12-074. It requests that the Commission allow recovery of its administration and system costs associated with administering procurement contracts in its Energy Resource Recovery Account (ERRA) annual reasonableness review filings on an interim basis pending the Commission's

decision in its test-year 2006 general rate case (GRC) filing. No parties filed comments.

In its comments on the draft decision, Edison states that the Commission has been authorizing recovery of these costs in its ERRA proceedings. The costs for 2003 and 2004 were authorized ERRA recovery in D.05-02-006 and D.06-01-007.⁴ Edison also plans to request recovery of its similar costs for 2005 in its ERRA application to be filed in April 2006. For 2006 and subsequent years, these costs have been included in Edison's 2006 GRC, Application 04-12-014.

Based on Edison's comments, we dismiss this petition as moot.

**f. Edison's March 16, 2004 Petition to Modify
D.04-01-050**

Edison requests that we modify the decision to clarify that Qualifying Facilities (QF) contract extensions under D.03-12-062 and D.04-01-050 are limited to a total of five years. The Cogeneration Association of California (CAC) and Energy Producers and Users Coalition (EPUC) oppose Edison's request, stating there is no basis in the record for this modification and citing to language in both D.03-12-062 and D.04-01-050 that establishes the Commission's intent as different than Edison's characterization.

We agree with CAC/EPUC that there is no basis in the record to support Edison's request and the petition is wrong on the merits. Therefore, we deny the petition.

⁴ Specifically, see D.05-02-006, *mimeo.* at pp. 9-10, and D.06-01-007, *mimeo.* at pp. 8-9.

**g. PG&E's March 26, 2004 Petition to Modify
D.04-01-050**

In its petition, PG&E requests the Commission:

- (1) Clarify language on the 90% level of forward contracting;
- (2) Modify Conclusion of Law 15 on non-unit contingent contracts to be consistent with the discussion language;
- (3) Find that any change in the Short-run Avoided Cost methodology would apply to the new Standard Offer 1 agreements, whether or not the Commission adopts a revised QF pricing policy at any time prior to December 31, 2005;
- (4) Change the finding that QF payments made pursuant to five-year agreements are not subject to the Public Utility Regulatory Policy Act of 1978; and
- (5) Authorize the utilities to operate until December 31, 2008 under their short-term plans and provide that the plans may be periodically reviewed or prospectively modified by Advice Letter.

Comments in opposition to PG&E's proposed changes to QF language were filed by CAC/EPUC, the California Cogeneration Council, and the Independent Energy Producers.

We find that the changes requested here are policy issues that the Commission is addressing in the current procurement proceedings. Therefore, we should deny this petition without prejudice.

4. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Christine M. Walwyn is the assigned ALJ in this proceeding.

5. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the

Rules of Practice and Procedure. Based on comments filed, substantial modifications are made to Sections 3a, b, c, d, and e.

Findings of Fact

1. The modifications requested by Edison in its February 19, 2004 petition to modify D.03-12-062 have been addressed by D.04-12-048 and D.05-12-022.
2. On February 16, 2006, SG filed a motion requesting its February 10, 2004 petition to modify D.04-01-050 be withdrawn.
3. The issues raised in SDG&E's February 20, 2004 petition to modify D.04-01-050 have already been addressed by the Commission in D.04-07-037.
4. The modifications requested by PG&E in its February 20, 2004 petition to modify D.03-12-062 are moot.
5. The modification requested by Edison in its February 23, 2004 petition to modify D.03-06-076 is moot.
6. There is no basis in the record to support the modifications requested by Edison in its March 16, 2004 petition to modify D.04-01-050.
7. The modifications requested by PG&E in its March 26, 2004 petition to modify D.04-01-050 are policy issues that the Commission is addressing in other proceedings.

Conclusions of Law

1. Edison's February 19, 2004 petition to modify D.03-12-062 should be dismissed because it is moot.
2. SG's February 16, 2006 motion to withdraw its February 10, 2004 petition to modify D.04-01-050 should be granted.
3. SDG&E's February 20, 2004 petition to modify D.04-01-050 should be dismissed because it is moot.

4. PG&E's February 20, 2004 petition to modify D.03-12-062 should be dismissed because it is moot.
5. Edison's February 23, 2004 petition to modify D.03-06-076 should be dismissed because it is moot.
6. Edison's March 16, 2004 petition to modify D.04-01-050 should be denied because the record does not support Edison's request.
7. PG&E's March 26, 2004 petition to modify D.04-01-050 should be denied without prejudice because these issues are being addressed in other proceedings.
8. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's (Edison) February 19, 2004 petition to modify Decision (D.) 03-12-062 is dismissed.
2. Sempra Generation's February 10, 2004 petition to modify D.04-01-050 is withdrawn.
3. San Diego Gas & Electric Company's February 20, 2004 petition to modify D.04-01-050 is dismissed.
4. Pacific Gas and Electric Company's (PG&E) February 20, 2004 petition to modify D.03-12-062 is dismissed.
5. Edison's February 23, 2004 petition to modify D.03-06-076 is dismissed.
6. Edison's March 16, 2004 petition to modify D.04-01-050 is denied.

7. PG&E's March 26, 2004 petition to modify D.04-01-050 is denied without prejudice.

8. Rulemaking 01-10-024 is closed.

This order is effective today.

Dated March 15, 2006 at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners